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T-888 P.002/005 F-167 *I*



12622
Patents

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of

Robert A. Matousek, et al.

Serial No.: 10/619,972

Filed: July 15, 2003

For: CAB ARRANGEMENT FOR
HARVESTING COMBINE

: Examiner: Alicia M. Torres

: Group Art Unit 3671

Last Office Action dated April 28, 2005

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

CERTIFICATE OF TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that this DECLARATION OF ROBERT A. MATOUSEK UNDER 37 C.F.R. §1.132 (along with any paper referred to as being attached or enclosed) is being sent via First Class Mail under 37 C.F.R. 1.8 to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on July 18, 2005.

Brant T. Maurer
Brant T. Maurer
Reg. No. 33,285

DECLARATION OF
ROBERT A. MATOUSEK UNDER 37 C.F.R. § 1.132

Dear Sir:

I, Robert A. Matousek, hereby state as follows:

1. I have worked in the employ of CNH America LLC ("CNH") for nineteen (19) years and am currently employed thereby. My current title is "Advanced Combine Development Engineer."

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2. I am a joint inventor of the above-identified Patent Application, having Serial No. 10/619,972 (the "'972 Application"), titled "Cab Arrangement for Harvesting Combine", also including Jonathan E. Ricketts as inventor. I have recently reviewed and understand the Claims of the '972 Application as they are currently pending. I am, therefore, familiar with the inventions disclosed therein. A copy of the pending Claims is attached hereto as Appendix A.

3. I am also a joint inventor of U.S. Patent No. 6,875,103 (the "'103 Patent"), titled "Apparatus and Method for Installing and Removing a Harvesting Combine Rotor", also including Jonathan E. Ricketts and Mark Epperly as inventors. I have recently reviewed and understand the entire Specification, Drawings, and Claims of the '103 Patent. I am, therefore, familiar with the disclosure contained therein, and the inventions disclosed thereby. A copy of the '103 Patent is attached hereto as Appendix B.

4. I, Robert A. Matousek, along with Jonathan E. Ricketts, conceived of the cab platform arrangement as disclosed by Figures 1-13 of the '103 Patent and, more generally, a cab platform arrangement having a rear platform portion positioned between the space between the cab and the combine body to allow an operator to visually monitor and access the combine, the platform further including at least one side platform portion connected to the rear platform portion, the at least one side platform portion extending forward along a side of the cab.

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5. Mark Epperly, joint inventor of the '103 Patent, aided only in conception of a viable manner of raising and/or lowering the combine harvester cab, more specifically, the apparatus and method for raising and lowering the combine harvester cab to create sufficient clearance to allow for the installation and removal of a harvesting combine rotor. Mark Epperly did not conceive of the cab platform arrangement apparatus as disclosed by Claims 1-16 and 21 of the '972 Application. Mark Epperly further did not conceive of the method of visually monitoring a harvesting combine using the cab platform arrangement of Claims 1-16 and 21, as disclosed by Claims 17-20 of the '972 Application.

6. The Examiner has rejected Claims 1-21 of the '972 Application as being anticipated under 35 U.S.C. § 102(e) by the '103 Patent.

7. However, the Examiner has noted that the above rejection under 35 U.S.C. § 102(e) can be overcome "by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference [i.e. the '103 Patent] was derived from the inventor of this application [i.e. the '972 Application] and is thus not the invention 'by another'". (See Page 2 of the Office Action mailed April 28, 2005.) A copy of the April 28, 2005 Office Action is attached hereto as Appendix C.

8. Accordingly, I, Robert A. Matousek, unequivocally state that I am a first and joint inventor, along with Jonathan E. Rickerts, of the cab platform arrangement apparatus, and method of visually monitoring a combine harvester using the cab platform

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arrangement apparatus, as claimed within pending Claims 1-21 of the '972 Application, the inventive embodiments being disclosed, but not claimed, by Figures 1-13 of the '103 Patent.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true; and further that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any patent that may issue from this application.

10. In light of the above unequivocal, truthful statements, it is hereby asserted that rejection of Claims 1-21 of the '972 Application as being anticipated under 35 U.S.C. § 102(e) by the '103 Patent is inappropriate because the invention has not been described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the application for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent. (See 35 U.S.C. § 102(e).)

FURTHER DECLARANT SAYETH NOT:



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14 July 2005

Date